

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3071 OF 2005

Konkan Van Shramik Sangh ...Petitioner

Vs.

The State of Maharashtra & Ors....Respondents

...
Ms.Hutoxi Tavadia with Ravindra Nair
for Petitioner
Mr.A.H.Palekar AGP for Respondents.
...

CORAM : B.H.MARLAPALLE, J.

DATE : MAY 4, 2005

P.C.:

1. Heard the learned counsel for the Petitioner-union which had filed Complaint (ULP) No. 498 of 1998 before the Industrial Court at Thane for seeking the relief of permanency under the Deputy Conservator of Forest Borivli Division, Sanjay Gandhi Rastriya Udyan, Borivli. By the impugned order dated 18.3.2005 a learned Member of the Industrial Court has dismissed the complaint.

2. The complaint was filed seeking permanency of 11 workmen who have been employed for number of years on daily wages and they continued to be so. The first of such 11 workmen claimed to have joined on 1.7.1986 whereas the last of them claimed to have joined on

21.1.1995 and each of them has completed more than 240 days of work in every year as per the Complainant-union. The complainant-union therefore, claimed that they were entitled for the benefits of the Govt. Resolution of 1996.

3. When the said 11 employees are working in a State Govt. Department, the issue of regularisation or appointment on permanent basis will be certainly covered by the service Rules i.e. Maharashtra Civil Services Rules and at the first instance such vacancies must be available. On the vacancies having been sanctioned by the State Govt. the prescribed procedure is required to be followed to fill in these vacancies. Admittedly, these 11 employees have not gone through such selection process and therefore, they cannot claim, as a matter of right, that they must be regularised or absorbed with permanent employment under Respondent No.1. For filing the complaint before the Industrial Court it was necessary for the Union to show that there were sanctioned posts available under Respondent NO.1 and the 11 daily rated employees possessed the prescribed qualifications and other eligibility requirements so that preference could have been given in the process of selection. Hence, the prayer for regularisation/absorption on permanent basis cannot be considered even though the reasoning given by the

Member of the Industrial Court in the impugned order is indefensible. The prayer made in the complaint submitted before the Industrial Court could not have been entertained.

4. Under these circumstances, no interference is called for in the impugned order. However, it is clarified that none of the 11 employees will be replaced by another set of daily rated workers unless of course, any one of them either abandons the job or found unfit on medical grounds. It is further clarified that if the Govt. Resolution of 1996 has already been implemented in respect of similarly placed daily rated workers under Respondent No.1 and if such Govt. Resolution is holding the field even as at present, the Respondents shall examine the eligibility of each of the 11 daily rated employees for whom the complaint was moved and decide each case on its own merits. Petition is disposed off accordingly.

5. Certified copy expedited.

[B.H.MARLAPALLE, J.]